

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000097-001 DT

04/14/2005

the peace and criminal damage). On December 2, 2004, Appellee was served with a forcible detainer summons and complaint. At the hearing, Appellee entered a guilty plea. Consequently, the trial court granted Appellant a judgment for a writ of restitution, \$920.44 in rents, and additional monies for late charges, court costs, and attorney's fees. However, the trial court denied Appellant's request for \$4,459.00 in rent incentives, which were due Appellant when Appellee breached the lease agreement. Appellant, having filed a timely notice of appeal, now brings the matter before this court.

Issue & Analysis

The only issue is whether the trial court erred when it denied Appellant's request for an award of the move-in incentives in the amount of \$4,459.00, as required by the lease agreement, and as provided under A.R.S. §§33-1368(C) and 1377(F). The lease agreement states in relevant part:

[I]f any incentive, move-in special or concession is given by Manager and received by Tenant, Tenant must immediately repay to Manager any incentive, move-in special or concessions in the amount of \$5000 DIV OVER 18 MO LEASE TAKES \$270 OFF RENT. MAKES RENT \$686.75 INCLUDES W/S/T. Upon any breach by Tenant of any provision of this agreement, whether a forcible detainer is filed, **IF TENANT TERMINATES THIS AGREEMENT PRUSUANT** [sic] **TO PARAGRAPH 20 OF THE LEASE AGREEMENT**, or for any other reason[emphasis added].

The terms of the parties' contract indicate clearly that the trial court should have granted Appellant's request for the \$4,459.00 as repayment of move-in incentives.

A.R.S. §§33-1368(C) provides authority for Appellant's recovery of the move-in concessions. A.R.S. §33-1368(C) states:

The landlord may recover all reasonable damages, resulting from noncompliance by the tenant with the rental agreement or § 33-1341 or occupancy of the dwelling unit, court costs, reasonable attorney fees and all quantifiable damage caused by the tenant to the premises[emphasis added].

After a careful examination of the record and Arizona law, I find Appellant's position persuasive, and must reverse the decision of the trial court, and remand with instructions to enter a new judgment that will include damages for rent or 'move-in' concessions.

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IT IS THEREFORE ORDERED reversing the decision of the Tolleson Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Tolleson Justice Court
for all further and future proceedings.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT